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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1059 OF 2002

Mr. Santosh Dnyandeo Kshirsagar ... Appellant

V/s

The State of Maharashtra ... Respondent

Ms. Sangita Chaudhary i/by Smt. Revati Mohite-Dere for the appellant/accused.

Smt. V.R. Bhosale, A.P.P. for the respondent.

CORAM: S. B. MHASE &
SMT. NISHITA MHATRE, JJ.

DATED: 12TH FEBRUARY, 2007.

ORAL JUDGMENT (PER SMT. MHATRE, J.):

1. The appellant has impugned the judgment of the II Ad-hoc Additional Sessions Judge, Pune, dated 26.7.2002. By this judgment the appellant has been convicted and sentenced under Section 302 of the Indian Penal Code.

2. The case of the prosecution is that the appellant alongwith one Laxman Kondiba Jogdand who was a juvenile when the trial took place, murdered the victim Jyoti.

The prosecution has alleged that on 18.5.2001 at about 11.00 a.m. when Jyoti, a minor, was alone at home, the appellant and Laxman entered her house. The appellant asked her to elope with him. She refused to do so and, therefore, both the appellant and Laxman were annoyed. Laxman held both Jyoti's hands with one hand and prevented her from screaming by clamping his other hand on her mouth. They had brought a plastic bottle containing petrol. The appellant doused Jyoti with petrol and set her on fire. The accused ran away from that place after setting her on fire. Jyoti's mother returned home after answering the call of nature and tried to extinguish the fire. Jyoti reported to her that the appellant and Laxman had set her on fire. The victim's mother then admitted her in hospital. The doctor who was treating her informed the Chinchwad police station that the victim had been admitted to hospital and that she had suffered severe burns. Jyoti's statement was recorded by the A.S.I. and also by the Special Judicial Magistrate. It appears that since the treatment at the hospital where Jyoti was admitted was inadequate, she was required to be shifted to the Sasoon Hospital where she succumbed to her injuries. The appellant and Laxman were arrested and tried for having committed an offence under Section 302 of the Indian Penal Code.

3. The prosecution has relied on the evidence of 6 witnesses. Since there were no eye witnesses to the incident, the entire case is based on circumstantial evidence. These are two dying declarations which the prosecution has pressed into service. The first dying declaration has been recorded by the Special Judicial Magistrate who is PW-3. This statement is at Exh.17 and has been recorded at 6.30 p.m. on 18.5.2001. The victim has narrated the incident as it occurred. She has also stated that, after Laxman had caught hold of her hands, he had clamped her mouth with the other hand, the appellant smacked her on the cheek, poured petrol from a plastic bottle which he had brought and set her on fire with a lighted match-stick. She has also stated that she used to be teased by the duo often and the appellant always insisted that she elope with him. The victim has also stated that her parents tried to impress upon the appellant and Laxman not to tease her and enraged by this, the appellant and Laxman set her on fire. This declaration was recorded by the Special Judicial Magistrate. He has stated that it was recorded only after the doctor treating the victim certified that she was in a fit state of mind to have her statement recorded. This witness has stated that since the victim had suffered 96% burn injuries and her finger prints

could not be taken, the impression of her left toe was obtained. The doctor who has certified the mental condition of the patient is examined as PW-4. He has stated that when the statement was recorded, the victim was conscious and oriented and he has endorsed the dying declaration to that effect. In the cross-examination he has stated that the palms of the victim were burnt completely. A perusal of the deposition of PW-3 and PW-4 and the dying declaration at Exh.17 indicates that the statement has been recorded by fulfilling all the requirements as per law. The statement appears to be genuine and credible. There is no reason, therefore, to disbelieve the statement of the victim.

4. Apart from the dying declaration at Exh.17, the A.S.I. who has been examined as PW-5 has also recorded a statement which is at Exh.21. The sum and substance of the statement again is that the appellant asked the victim to elope, she refused and, therefore, he and Laxman set her on fire. However, this statement is not endorsed by any medical officer nor is there any mention about the mental condition of the victim when the statement was recorded. PW-5 has stated in his deposition that the statement was recorded after he ascertained that she was in a fit mental condition to have a statement recorded.

5. Ms. Choudhary for the appellant submits before us that these statements could have been made by the victim after she was tutored by her mother. She points out that PW-1, the mother of the victim, had sufficient opportunity to tutor the victim while she was being taken to the hospital and, therefore, the dying declarations should not be accepted. This submission of the learned advocate cannot be accepted as besides the two recorded statements, the victim had made an oral declaration to PW-1, her mother, that the appellant had set her on fire when she refused to elope with him and marry. The victim disclosed this fact to her mother immediately after her mother found her ablaze and extinguished the fire. This is the first opportunity the victim had to reveal the names of the perpetrators of the crime. She has been consistent in her version and, therefore, the victim’s statements are credible. Apart from this, the statement recorded at Exh.17, which is in question and answer form, indicates that it is genuine.

6. PW-1 who is the mother of the victim, has stated that when she returned after answering the call of nature, she found that her daughter was set alight. She tried to extinguish the fire by covering the victim with

a blanket. This witness has identified the appellant and has stated that he stays adjacent to her in the hutment colony where they reside. The witness has admitted in the cross-examination that she had not seen the accused in the room or entering it or leaving the room. She has denied a suggestion put to her by the defence that Jyoti had committed suicide since Santosh i.e. the appellant refused to marry him.

7. The learned advocate for the appellant submits that this evidence of PW-1 is that of an interested witness and she should be believed unless her testimony is corroborated. She submits that there is no other witness who has been examined by the prosecution to support the case made out by PW-1. We are unable to accept this submission of the learned advocate. We have perused the deposition of PW-1 and found that there are no material additions, alterations or discrepancies made by the victim in her statement. Her testimony is credible and she has withstood the cross-examination without any prevarication.

8. The panchanama which was recorded and has been proved through PW-6, the investigating officer, indicates that a plastic bottle smelling of petrol was found in the room. Besides this, a match-box and pieces

of blue cloth which were burnt, were found at the scene of offence. The learned advocate appearing for the appellant points out that although PW-1 in her deposition has stated that she tried to extinguish the fire with the help of a blanket, this blanket has not been seized by the police when the spot panchanama was recorded. She also submits that there is no report of the Chemical Analyzer and PW-6 has admitted in his cross-examination that he did not send the plastic bottle recovered from the scene of offence for chemical analysis.

9. However, this evidence of the Chemical Analyzer would only be corroborative in nature and the case of the prosecution cannot fall merely because there is no report of the Chemical Analyzer.

10. We have scrutinized the judgment which has been impugned in this appeal and find that the Trial Court has correctly marshalled the facts and the evidence led before it. This case is based on circumstantial evidence and we are inclined to accept the dying declaration at Exh.17. This has been corroborated by PW-1, mother of the victim and PW-4, the doctor who had treated the victim in Sasoon Hospital. PW-4 has stated that the victim, while giving him the history of her

burn injuries, has stated that she was burnt by the appellant and Laxman since she refused to elope with the appellant. All these circumstances, in our opinion, point to the guilt of the appellant of having caused culpable homicide.

11. We agree with the findings recorded by the Trial Court and, therefore, dismiss the appeal as there is no merit.

12. Appeal dismissed.

(SMT. NISHITA MHATRE, J.) (S.B. MHASE, J.)